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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/068,583	02/06/2002	Richard W. Cline	XILL118409	9671
26389	7590	02/23/2005	EXAMINER	
CHRISTENSEN, O'CONNOR, JOHNSON, KINDNESS, PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			VO, TUNG T	
			ART UNIT	PAPER NUMBER
			2613	

DATE MAILED: 02/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/068,583	Applicant(s) CLINE ET AL.	
	Examiner Tung Vo	Art Unit 2613	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-13 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05/28/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 05/28/03 has been considered.

Preliminary Amendment

2. Claims 1-10 are canceled. Claims 11-13 are pending.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claim 11 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,462,770. Although the conflicting claims are not identical, they are not patentably distinct from each other because limitations in claim 11 of the application is broader than the limitations in claim 1 of the patent, wherein the claimed limitations in claim 11 of the application comprises a light source that produces fluorescence excitation light; an endoscope that delivers the excitation light to tissue

Art Unit: 2613

under examination in vivo and collects auto-fluorescence produced by the tissue sample; a dual channel fluorescence camera containing a first and second high sensitivity imaging device that receives the auto-fluorescence light in a first and second spectral band and produces electronic signals that are representative of the tissue sample under examination; a control center including an image processing board that receives the electronic signals produced by the dual channel fluorescence camera that are representative of the tissue under examination and produces an indication of a relative intensity of the auto-fluorescence light in each of the first and second spectral band that produces a portion of an image of the tissue; and a video monitor that displays the video signals to create an image of the tissue under examination.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 11-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang et al. (US 6,537,211 B1).

Re claims 11-13, Wang discloses an endoscope (see figures 5, 14A, and 15) comprises:
a light source (302 of fig. 14A) that produces fluorescence excitation light;

an endoscope (332 and 324 of fig. 14A) that delivers the excitation light to tissue under examination in vivo and collects auto-fluorescence produced by the tissue sample (212 of fig. 14A);

a dual channel fluorescence camera (the CCD camera at the distal tip of the endoscope 324 of fig. 14A) containing a first and second high sensitivity imaging device that receives the auto-fluorescence light in a first and second spectral band and produces electronic signals that are representative of the tissue sample under examination (see also col.1 line 59-col. 2, line 5;e.g. a dual channel electronic endoscope that employs a charge coupled device (CCD) chip or other solid state imaging device mounted on its distal tip to collect the white light image. Of particular significance for the present invention is that this chip can also collect the fluorescence image, displaying it on the endoscope's video monitor with much larger signal size than that obtained using the optics module and intensified CCD camera. This configuration was used to collect fluorescence images of colonic dysplasia. Video images of two small FAP polyps, have been taken with the standard white light image and the unprocessed fluorescence image);

a control center (COMPUTER 338 of fig. 14A) including an image processing board (334 of fig. 14A) that receives the electronic signals produced by the dual channel fluorescence camera that are representative of the tissue under examination and produces an indication of a relative intensity of the auto-fluorescence light in each of the first and second spectral band that produces a portion of an image of the tissue (308 and 310 of fig. 14A, e.g. wavelength filters 308 and 310 and rotating shutters 312 and 314 to provide precisely-timed, tissue-illumination pulses in two separate wavelength bands. The first wavelength band is centered on the near-ultraviolet (365 nm) mercury resonance line and is used to obtain the UV auto fluorescence image. The

Art Unit: 2613

second wavelength band is at the red end of the visible spectrum and is used to obtain a simultaneous or near-simultaneous, reflectance image for the purpose of identifying shadows and the extent of the UV illumination field) ;

a video monitor (342 of fig. 14A) that displays the video signals to create an image of the tissue under examination;

wherein the indication of the relative intensity comprises numeric representation of the relative intensities of the auto-fluorescence light in each the first and second spectral bands (fig. 14B);

wherein the indication is displayed on a video monitor (342 of fig. 14A).

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tung Vo whose telephone number is 703-308-5874. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris. Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2613

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



TUNG T. VO
PATENT EXAMINER

Tung Vo
Primary Examiner
Art Unit 2613

T.VO.